IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Sabu @ Sahabeen & Another Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.807/2004)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 15-7-2004 in Sessions Case No.84/2003 passed by Sh. Ravi Kumar Gupta, Additional Sessions Judge (Fast Track) Kishangarh Bas (Alwar).

Date of Judgment: March 14, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Nawab Ali Rathore, for the appellants.

Mr. Shyam Arya, Public Prosecutor for the State.

BY THE COURT:

Sabu @ Sahabdeen and Karmoo @ Kamru, the appellants herein, were put to trial before the learned Additional Sessions Judge (Fast Track) Kishangarh Bas District Alwar, who vide judgment dated July 15, 2004 convicted and sentenced them as under:-

U/s.376 (2)(G) IPC:

To suffer rigorous imprisonment for ten years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for six months.

U/s.456 IPC:

To suffer rigorous imprisonment for one year and fine of Rs.500/-, in default to further suffer simple imprisonment for three months.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Menkhan (Pw.10) submitted a written report (Ex.P-15) on June 27, 2003 at Police Station Kishangarh Bas with the averments that on June 25, 2003 around 11 PM while his wife Fatima (fictitious name) was sleeping in the house the accused Sabu, Karmu and Umar entered inside the house lifted Fatima and took her in a room and committed rape on her. After the incident Cast Panchayat was summoned in the next morning and a decision was taken in the Panchayat to lodge the report. On that report a case was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Kishangarh (Alwar). Charges under sections 376(2)(G) and 456 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 15 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Learned counsel for the appellants in the process of assailing the impugned finding made following submissions:-

(i) There was unexplained delay in lodging the report. The incident took place at 11 PM on June 25, 2003 however the report was lodged on June 27, 2003. Since there was previous enmity between the parties the delay in lodging the report demolished the entire prosecution case.

(ii) Dr. Kamlesh (Pw.4) who examined the prosecutrix on June 28, 2003 did not find any injury on the person of prosecutrix.

(iii) Even according to prosecutrix herself she was sleeping on a cot by the side of her Nanad Kalli. In such a situation it was not possible for the accused to lift her silently without disturbing the sleep of her Nanad.

4. Learned Public Prosecutor however supported the impugned judgment and canvassed that testimony of prosecutrix was rightly believed by the trial court. Having scanned the material on record and considering the statements of the prosecutrix I find the factual situation as under:-

(a) The delay of two days in lodging the FIR remained unexplained.
(b) Dr. Kamlesh (Pw.4) examined the prosecutrix and found no injury on her person.
(c) The prosecutrix (Pw.3) in the cross examination admitted that during the course of offence she did not raise any alarm and the intercourse was committed in a room that was not bolted.

5. The testimony of prosecutrix in the instant case is vital since she was married and the medical evidence in no way corroborates the charge. It is well settled in law that conviction for offence of rape can be based on the sole testimony of the prosecutrix if it is reliable, unimpeachable and there is no infirmity. The testimony of the prosecutrix is required to be appreciated in the back ground of entire case. The onus to prove that the accused committed sexual intercourse with prosecutrix without her consent and against her will as laid down in section 375 IPC is on the prosecution.

6. From the judicial decisions rendered by the Apex Court the law as regards the credibility of the testimony of prosecutrix may be summarized thus:-

(i) There is no rule of law that corroboration is essential before there can be a conviction solely on the testimony of the prosecutrix. But as a matter of prudence, the necessity of corroboration must be present to the mind of the Judge.

(ii) There may be circumstances in a given case which might make it safe to dispense with such a corroboration.

(iii) On the other hand, there may be factors in a case tending to show that the testimony of the prosecutrix suffers from infirmities in a manner so as to make it either unsafe or impossible to base a finding of guilt to the same. Some of the salient factors of this type may briefly be stated thus:-

(a) circumstances showing on the part of prosecutrix an animus against the accused;

(b) where the question of want of consent is material, circumstances tending to show consent: e.g., absence of material showing an attempt at resistance; absence of any marks of struggle;

(c) attempt at improvement or exaggeration in the version as attempted by the prosecutrix;

(d) conduct on the part of the prosecutrix, inconsistency with the credibility of the version e.g., omission to make a disclosure at the earliest opportunity;

(e) element of artificiality or unnaturalness in the story as attempted by the prosecutrix, and

(f) absence of signs of rape in the findings of the medical examination or on chemical analysis.

7. In the case on hand the incident allegedly occurred on a rough surface and by three persons but strangely she did not sustain any internal or external injury. According to Dr. Kamlesh (Pw.4) the prosecutrix was habitual of sexual intercourse and no internal or external injury was found on her person. The delay in filing the report has not been explained. The facts and circumstances of the case demonstrate that the prosecutrix and her family members had an animus against the appellant. I find unnaturalness in the prosecution story. To my mind the testimony of prosecutrix and other witnesses does not inspire confidence. In the facts and circumstances of the case the possibility that the prosecutrix was a consenting party cannot be ruled out.

8. For these reasons, I allow the appeal and set aside the impugned judgment dated July 15, 2004 of learned Additional Sessions Judge (Fast Track) Kishangarh Bas District Alwar. I acquit the appellants Sabu @ Sahabdeen and Karmoo @ Kamru of the charges under sections 376(2)(G) and 456 IPC. The appellants who are in jail shall be set at liberty forthwith, if not required to be detained in any other case.

(Shiv Kumar Sharma)J.

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